



**Office of the Clerk**  
**UNITED STATES COURT of APPEALS for the NINTH CIRCUIT**  
**95 Seventh Street, Post Office Box 193939**  
**San Francisco, California 94119-3939**



Cathy A. Catterson, Clerk of Court

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**AMENDMENTS TO THE GENERAL ORDERS**  
**Effective July 1, 2002**

<b>Gen. Order</b>	<b>TITLE</b>	<i>New or Revised</i>	<b>PURPOSE OF AMENDMENT</b>
3.7	<b>CALENDARING</b> Comeback Cases	New	To clarify policy regarding comeback cases.
4.5e	<b>DISPOSITIONS</b> Filing of Dispositions e. Costs	Revised	To clarify disposition's requirements regarding the costs.
<b>Chapter V</b> 5.1.b.1	<b>EN BANC PROCEDURES</b> <u>General Provisions</u> 1. Judicial Participation	Revised	Clarifies what happens when a judge becomes available after being unavailable.
5.1.b.2	Duties of the En Banc Coordinator	Revised	Clarifies authority of En Banc Coordinator.
5.1.b.5	Extensions of Time	Revised	Adds e-mail provisions.
5.1.b.6	Notification to En Banc Coordinator	Revised	Broadens distribution requirement.
5.1.b.7	Death Penalty Cases	Revised	Distinguishes role of Death Penalty Coordinator.
5.2.a	Petition by a Party Prior to Calendaring	Revised	Broadens distribution.
5.3.a & b	Amendment of Disposition; Proposal by Judge	New	Clarifies impact of amended opinions on pending or possibly new petitions for rehearing en banc.
5.4.b.2	<u>Rehearing En Banc</u> b. Request for Notice of Panel Vote on Petition for Panel Rehearing and Time Within Which Judges Must Act After Notice 2.Circulation of Notice; Vote on Petitions; Proposed Amendments	Revised	Clarifies when en banc call is to be made.
5.4.c.1.	<u>Rehearing En Banc</u> 1. En Banc Calls and Supplemental Briefing	Revised	Clarifies when memo in support of en banc call should be distributed.
5.4.c.2.	Supplemental Briefing	Revised	Permits clerk to issue briefing order.
5.4.c.3	3. <i>Sua Sponte</i> Calls	Revised	Allows En Banc Coordinator to determine that no supplemental briefing is needed; notify parties of <i>sua sponte</i> en banc call.

<b>Gen. Order</b>	<b>TITLE</b>	<i>New or Revised</i>	<b>PURPOSE OF AMENDMENT</b>
5.4.c.4	4. Withdrawal of En Banc Calls	New	New subsection to permit withdrawal of en banc call.
5.4.d	Staying the Mandate	Revised	Requires judge to inform Clerk of en banc call.
5.4.e	e. Stopping the Clock	Revised	Clarifying that the “stop clock” is extended when the time to file the PFR-EB is extended.
5.5.b	<u>Procedure After Supplemental Briefing</u> b. Voting	Revised	Documents right to change vote before voting period concludes.
5.6	<u>Reserved Time</u>	Revised	Documents the quarterly scheduling for en bancs.
5.7.a	<u>Assignment of Opinion Writing, Circulation, and Filing of Disposition</u> a. Assignment of Opinion Writing	Revised	Extends time to writing majority and dissenting opinions from 28 to 45 days.
5.7.b.1	1. Circulation of Opinions	Revised	Extends time to writing majority and dissenting opinions from 28 to 45 days.
6.3.a.	<b>MOTIONS &amp; SCREENING CASES</b> 6.3 Delegation of Authority to Dispose of Motions a. Dispositions of Motions by the Clerk	Revised	To clarify authority for disposing of motions.
6.4.c	Emergency Motions c. Motions for Stay of Deportation or Removal in Petitions for Review	New	To streamline processing of immigration cases.
6.5.a	<u>Motions and Screening Cases</u> <u>Screening Calendars</u> a. Selection and Criteria of Cases for Screening Calendars	Revised	Clarify those limited instances in which a published disposition or order might emanate from a screening and motions panel.
6.5.c.i.	c. Oral Screening Panel Presentations i. Disposition of Cases	Revised	Clarify those limited instances in which a published disposition or order might emanate from a screening and motions panel.
6.5.d.3	Written Screening Panels 3. Dispositions	Revised	Clarify those limited instances in which a published disposition or order might emanate from a screening and motions panel.
12.5	<b>MISCELLANEOUS PROVISIONS</b> Discipline of Attorneys Admitted to Practice in This Court.	Revised	Clarifies disciplinary procedures.

**Highlighted text shows changes made.**

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## **CHAPTER III - Calendaring**

### **3.7. Comeback Cases (New, 7/1/2002)**

When a new appeal is taken to this court from a district court or agency decision following a remand, the calendaring staff shall notify the panel that remanded the case that the new appeal is pending. The notification shall contain a brief description of the issues presented. If the issues predominantly involve the interpretation and application of the original panel decision, the panel in its discretion shall consider the time and manner of submission and notify the staff whether it will accept the appeal. If the new appeal presents no issues that would benefit from the earlier panel research, or if it is impossible to reconstitute the panel, then the panel has no obligation to accept jurisdiction of the appeal. If the appeal is one that would not ordinarily be submitted on the briefs by a randomly drawn panel without oral argument, and if oral argument cannot be timely and conveniently calendared, then, in its discretion, the panel may reject the appeal. In the exercise of its discretion to accept or reject a return appeal, the panel should balance its convenience with that of the other judges of the court, with due regard to the interests of the litigants in a timely and appropriate disposition.

Note: Capital cases are governed by Circuit Rule 22-2(c), which states, “that once a capital case is assigned to a panel it retains jurisdiction for all future appeals.”

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## **CHAPTER IV -- Dispositions**

### **4.5. Filing of Dispositions**

#### **a. Majority, Concurring, and Dissenting Dispositions**

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#### **b. Rule 36 - Notation on Memoranda Dispositions**

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#### **c. Electronic Transmission of Dispositions**

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#### **d. Temporary Hold**

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#### **e. Costs**

Every disposition in a civil case where there is a mixed judgment, the lower tribunal’s judgment is vacated, or where the panel determines that costs shall be unequally divided among the losing parties shall indicate in its text or in a separate order which party or parties shall bear the costs. The Clerk’s Office, before filing the disposition, shall determine whether the disposition makes that indication. If the disposition does not indicate which party or parties shall bear the costs, the Clerk’s Office immediately shall request that information from the authoring judge, who will enter an appropriate order.

The authoring judge shall also be responsible for motions for reconsideration of the clerk's orders pertaining to cost bills that are entered under Ninth Circuit Rule 39-1.5 and General Order 6.3a. The clerk may refer a motion and proposed order to the authoring judge when the motion presents a novel issue. *(New, 7/1/2002)*

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## **CHAPTER V - En Banc Procedures**

### **5.1. Definitions and General Provisions**

#### **a. Definitions**

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#### **b. General Provisions**

##### **1. Judicial Participation**

Each judge selected for the en banc court shall make every reasonable effort to sit on the en banc court, but if unable to sit, the judge shall notify the Clerk as promptly as possible so that the Clerk may be directed to draw a replacement. **If a judge becomes available after notifying the Clerk of inability to sit, that judge shall notify the Clerk of his or her availability and shall sit on the en banc court, unless a replacement judge has already been drawn, in which case the replacement judge shall sit on the en banc court. In such event, the originally-selected judge shall be placed back in the pool of available judges. *(Rev. 7/1/2002)***

All members of the court, senior and active, and visiting judges who participated in the panel decision, shall be kept informed of en banc proceedings, including all en banc calls, responsive memoranda, and votes, until a case is taken en banc or returned to the panel. After a case has been taken en banc, only those judges participating in the en banc court shall be included in the distribution of memoranda, proposed opinions, and other communications regarding en banc proceedings.

**2. Duties of the En Banc Coordinator**

The en banc coordinator shall supervise the en banc process, including time schedules provided in this chapter; shall circulate periodic reports on the status of each case under en banc consideration; may, for good cause, extend, suspend, or compress the time schedules provided in this Chapter; may designate another judge to perform all or part of the en banc coordinator's duties during the coordinator's absence; may suggest, for any particular case, a modification or suspension of the provisions of this chapter; and may for good cause suspend en banc proceedings. (Rev. 7/1/2002)

**3. Vote Tallies**

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**4. Duties of Panel Members**

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**5. Extensions of Time**

Until a case is taken en banc or returned to the panel, any request by a judge for an extension of time shall be made in writing or by electronic mail to the en banc coordinator with copies to all judges prior to the expiration of the relevant time period.

**6. Notification to En Banc Coordinator**

Judges should direct copies of all en banc correspondence under this Chapter to the en banc coordinator and the Clerk of Court or any person the Clerk may designate until a final en banc vote is tallied.

## 7. Death Penalty Cases

En banc procedures in death penalty cases, when a date for execution has been set, are contained in Circuit Rule 22 and shall be supervised by the Capital Case Coordinator.

### 5.2. Initial Hearing En Banc

#### a. Petition by a Party Prior to Calendaring

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As soon as possible after the completion of briefing, the motions attorney shall prepare for the en banc coordinator a memorandum setting forth the facts and issues of the case. The en banc coordinator shall promptly notify all judges that a party has petitioned for an initial hearing en banc, but that the case will be calendared before a three-judge panel unless a judge makes an en banc call. The en banc coordinator shall distribute the motions attorney's memorandum and may also distribute an independent evaluation of the matter. Any judge may call for en banc within 14 days after receipt of notice from the en banc coordinator.

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#### b. Call for En Banc by Panel

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### 5.3. Amendment of Disposition; Proposal by Judge

#### a. Amendment of Disposition

If a panel amends its disposition, the panel shall set forth in its amended disposition or separate order: (1) the ruling on the petition for rehearing or petition for rehearing en banc; (2) whether subsequent petitions for rehearing or rehearing en banc may be filed; and (3) the status of any pending petitions for rehearing or rehearing en banc not ruled on. The Clerk's office shall contact the authoring judge if the amended disposition does not so specify. (New 7/1/2002)

#### b. Proposal by Judge.

Any active or senior judge may, before an en banc call is made or before the time for calling for en banc expires, propose to the panel that it amend its disposition. Such a request does not suspend en banc procedures. Any proposal to amend shall be accompanied by the text of the proposed amendment.

## **5.4. Rehearing En Banc**

### **a. Duties of Clerk**

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### **b. Request for Notice of Panel Vote on Petition for Panel Rehearing and Time Within Which Judges Must Act After Notice**

#### **1. Request for Notice**

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#### **2. Circulation of Notice; Vote on Petitions; Proposed Amendments**

If a judge timely requests notice pursuant to G. O. 5.4.b.1, the panel shall circulate to all judges notice of its vote on the petitions for panel rehearing and rehearing en banc. If the panel decides to amend its opinion the panel shall notify all judges of its proposed amendments.

A judge must call for an en banc vote within: (1) 14 days of the date of the panel's distribution of the GO 5.4b notice; (2) 21 days after the circulation of the last-filed petition for rehearing en banc; or (3) if a response to the petition for rehearing en banc has been requested, within 14 days after the circulation of the response, whichever is latest. (Rev. 7/1/2002)

#### **3. Procedure When Only a Petition for Panel Rehearing is Filed**

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### **c. En Banc Calls and Supplemental Briefing**

#### **1. En Banc Calls**

Any judge may call for a vote to rehear a case en banc: (1) in response to notice of the panel's vote that a petition for rehearing en banc be denied and a petition for panel rehearing denied (see GO 5.4.b), or (2) *sua sponte*. The requesting judge shall notify the panel and all other members of the court of any call, and shall forward a memorandum setting forth reasons: (1) within 14 days of the date of distribution of the call; (2) within 14 days after the circulation of the response to the petition for rehearing en banc; or (3) in the case of *sua sponte* calls, within 7

days after the circulation of the simultaneous briefing, whichever is latest. (Rev. 7/1/2002)

## 2. Supplemental Briefing

When an en banc call is made in a case in which a party has petitioned for en banc consideration and in which no response to the petition has been previously filed, the author of the panel opinion or the Clerk of Court upon request of the en banc coordinator, shall ordinarily enter an order directing counsel to file within 21 days of the date of the order a response to the petition for rehearing en banc. The time provided by GO 5.5.a in which judges shall circulate memoranda will not start to run until the response is filed or the en banc coordinator determines that no response will be filed.

## 3. Sua Sponte Calls

A judge may *sua sponte* call for a vote on rehearing en banc within seven days of the expiration of the time for filing a petition for panel rehearing. This means the *sua sponte* call must be made within 21 days of the filing of the panel's decision in all cases, except civil cases in which the United States is a party. In such cases, the call must be made within 52 days of the filing of the panel's decision. See F.R.A.P. 40(a). A judge may also call for en banc within 21 days of the filing of an order directing that a previously unpublished disposition be published. Upon receipt of a timely *sua sponte* en banc call, the author of the panel opinion or the Clerk of Court upon the request of the En Banc Coordinator shall ordinarily enter an order directing the parties to file simultaneous briefs within 21 days setting forth their respective positions on whether the matter should be reheard en banc. If the En Banc Coordinator orders that no supplemental briefing will be filed, the parties will be notified of the *sua sponte* en banc call. The date the simultaneous briefs are circulated by the Clerk's Office or the date En Banc Coordinator determines that no supplemental briefs will be filed will start the time for circulation of memos set forth in GO 5.5.a. (Rev. 7/1/02)

## 4. Withdrawal of En Banc Calls.

A judge may withdraw an en banc call by notifying the en banc coordinator in writing with copies to all judges. The time periods set forth in this chapter shall be suspended for a period of seven (7) days following circulation of the notice to enable another judge to pursue en banc consideration. (New, 7/1/2002).

**d. Staying the Mandate**

If a stop clock or a *sua sponte* call is made, in a case where no petition for rehearing en banc or petition for panel rehearing has been filed, the judge who makes the call shall in writing **or by electronic mail** direct the Clerk **of Court or any person the Clerk may designate** to stay the mandate and notify the panel. If a judge makes a call or stops the clock before the time for filing a petition for panel rehearing has expired, it is the responsibility of that judge to notify the Clerk **of Court or any person(s) he or she may designate** to stay the mandate in the event no petition for panel rehearing is filed. Otherwise the mandate will issue pursuant to F.R.A.P. 41(a) and en banc procedures will terminate. It is also that judge's responsibility to notify the Clerk's Office if the stop clock or en banc call is withdrawn.

**e. "Stopping the Clock"**

A judge, without calling for an en banc vote, may extend the time in which to make an en banc call for 14 days. **Only one such delay is permitted. In cases where no petition for rehearing has been filed by a party, the judge stopping the clock shall notify the Clerk's office to stay the mandate. When a judge stops the clock pending review of a petition for rehearing, and the panel grants a party an extension of time to file a petition for rehearing beyond the 14-day stop clock period, the "stop clock" period will extend for 14 days after the petition is due. (Rev. 7/1/2002)**

## **5.5. Procedure After Supplemental Briefing**

### **a. Memoranda**

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### **b. Voting**

When the exchange of memoranda has been completed, the en banc coordinator shall notify all active judges to vote. No judge shall circulate further correspondence on the case after that notice. A judge's failure to vote shall be considered a "no" vote. Unless otherwise ordered, each judge shall cast a vote within 14 days of the notice to vote. A judge may change his or her vote if accomplished prior to the expiration of the voting period. Upon the expiration of the voting period, the en banc coordinator shall notify the judges of the result and the vote tally.

### **c. No Majority Favoring En Banc Consideration**

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### **d. Majority Favoring En Banc Consideration**

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## **5.6. Reserved Time**

En banc oral arguments and conferences shall normally be scheduled on a quarterly basis in conjunction with court meetings. A location for each en banc argument will be determined by the Chief Judge in consultation with the Court Executive Committee. Judges are expected to appear in person for en banc hearings. In the event no oral argument is to be heard, the Chief Judge shall designate a date, time, and place for a conference of the en banc court, which ordinarily shall also be the date of submission of the case.

## **5.7. Assignment of Opinion Writing, Circulation, and Filing of Disposition**

### **a. Assignment of Opinion Writing**

After the case has been submitted to the en banc court, the judge senior in service among those voting with the majority shall assign the writing of the majority opinion. In the event more than one judge expresses a minority view, the senior judge among those sharing that view may assign the writing of a dissenting opinion without restricting any judge in the expression of individual views. A judge should not be selected to write a majority or dissenting opinion

unless the judge's workload will permit the judge to circulate the opinion within 45 days.

**b. Circulation of Opinions**

**1. Majority Opinion**

Any judge unable to circulate the first draft of the majority opinion within 45 days shall circulate a memorandum to the members of the en banc court stating why the deadline cannot be met. The memorandum should state when the draft opinion will be circulated.

**2. Dissenting or Other Separate Opinion**

A judge who plans to circulate a dissenting or other separate opinion shall notify the members of the en banc court as soon as possible, but in any event within 14 days after the date of distribution of the draft of the majority opinion. Any dissenting or separate opinion shall be circulated within 45 days after a proposed majority opinion is distributed.

**3. Voting on Opinions**

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**c. Filing of Dispositions**

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**5.8. Rehearing by Full Court**

**a. Petition by a Party**

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**b. Sua Sponte Calls**

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**5.9. Stay or Recall of Mandate**

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## CHAPTER VI - Motions and Screening Cases

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### 6.3. Delegation of Authority to Dispose of Motions

The Clerk shall enter the receipt or filing of a motion and transmit it as described below.

#### a. Dispositions of Motions by the Clerk

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The Clerk may additionally enter orders that deny late requests for costs as untimely and respond to motions for late filing. Such orders are subject to reconsideration by the authoring judge; any motion for reconsideration is due 14 days from the date of the clerk's order. Prisoners not represented by an attorney shall have 28 days from the date of the clerk's order to move for reconsideration. *(New, 7/1/2002)*

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### 6.4.c Motions for Stay of Deportation or Removal in Petitions for Review *(New 7/1/2002)*

#### 1. Temporary Stay

Upon the filing of a motion or request for stay of removal or deportation, the order of removal or deportation is temporarily stayed until further order of the court. A briefing schedule will not be set until the motion for stay is resolved. Any existing briefing schedule will be deemed vacated upon the filing of such a motion.

#### 2. Supplemental Motion

If the court determines that the motion or request for stay fails to discuss the merits of the petition for review and to identify the potential hardships faced by the petitioner due to deportation or removal during the pendency of the petition, an order will inform the petitioner of that determination and provide petitioner with the opportunity to file a supplemental motion for stay within 14 days from the filing of the order.

#### 3. Response

The respondent shall file its response to the request or motion within 42 days from filing of the original request or motion. The administrative record is due with the response. If the administrative record is not filed by the time the response is due, the respondent shall, at a minimum, include with its response a copy of the Board of Immigration Appeals' order if such order has not been provided by petitioner and the Immigration Judge's order

if such order provides the primary basis for the Board's decision. Any dispositive motions respondent seeks to file are due at the same time the response is due.

**4. Reply**

The petitioner may file a reply to the response within 7 days from service of the response.

**5. Orders to Show Cause**

If the court determines that it may lack jurisdiction over the petition for review, an order will be issued directing the petitioner to show cause why the petition should not be dismissed for lack of jurisdiction. The time limits set forth in this rule will not apply and the order will establish the applicable time limits for responding to the order. The temporary stay will continue in effect pending resolution of the jurisdictional issue or until further order of the court.

**6. Non-Opposition**

If respondent files a motion of non-opposition to the stay motion in lieu of the response provided for in subsection (c) above, the temporary stay shall continue in effect during the pendency of the petition for review or until further order of the court. If the respondent files a notice of non-opposition, the administrative record will not be due in accordance with subsection (c), and a new briefing schedule and due date for the administrative record will be established upon receipt of the notice of non-opposition.

**7. Other Petitions for Review**

If a petition for review is filed without a request for a stay of deportation or removal, a briefing schedule shall be established upon the filing of the petition. The administrative record will be due 90 days from the filing of the petition rather than 40 days as provided in Fed. R. App. P. 15.

*Note: Pursuant to this court's decision in DeLeon v. INS, 115 F.3d 643 (9th Cir. 1997), a final order of deportation or removal is automatically temporarily stayed upon the filing of a motion or request for stay of deportation or removal in a petition for review of such an order. This temporary stay is in effect whether or not the court issues an order confirming such stay. See, id. The court will not ordinarily issue such an order confirming the stay, although it may issue an order to show cause relating to jurisdictional questions or issues pertaining to the sufficiency of the stay request and/or the payment of fees. With regard to further briefing on the merits of the stay, petitioner may file a supplemental motion within 14 days. See, Abbassi v. INS, 143 F.3d 513 (9th Cir. 1998).*

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## **6.5. Screening Calendars**

### **(a) Selection and Criteria of Cases for Screening Calendars**

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After the Clerk assigns a case to the screening calendar, the Clerk's Office forwards the case materials to the staff attorneys. The staff attorneys then place each screening case on either an oral screening calendar or a written

screening calendar. Cases that are eligible for the screening program, but that the Clerk does not assign to the staff attorneys, shall be placed on the oral argument calendar. *(Rev. 7/1/2002)*

- (b) Objections and Reconsideration**
- (c) Oral Screening Panel Presentations**

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- (i) Disposition of Cases**

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Disposition of cases presented at the oral screening and motions panel ordinarily will be by unpublished memorandum or order. If, in the judgment of the panel, a decision warrants publication, then the matter shall be forwarded to the next available merits panel unless: (1) it involves exigent circumstances arising from an emergency motion; or (2) is a highly time-limited proceeding that cannot appropriately be resolved using normal procedures. If the panel decides to publish in one of these unusual circumstances, the proposed opinion shall be included in the pre-publication report with a notation that it arose from a screening and motions panel. *(Rev. 7/1/2002)*

- (ii) Rejection of Cases**

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- (iii) Petitions for Rehearing**

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- (d) Written Screening Panels**

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- (1) Serial or Parallel Processing**

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- (2) Rejection by Judges**

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- (3) Dispositions**

Dispositions of cases by written screening panels will be by memorandum, except, as provided in General Order 6.5(c)(i). *(Rev. 7/1/2002)*

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## **CHAPTER XII -- Miscellaneous Provisions**

### **12.5. Discipline of Attorneys Admitted to Practice in This Court** *(Rev. 7/1/2002)*

The Clerk shall periodically check the lists forwarded to the court concerning state disbarments and suspensions against the roll of attorneys practicing before this court. If it is discovered that any member of the bar

of this court has been disbarred or suspended from the practice of law by any court or other competent authority or resigns during the pendency of disciplinary proceedings, the Clerk or a designated deputy shall assign a docket number to the matter and shall issue an order instructing the attorney to resign within **twenty-eight (28)** days from the entry of the order from the bar of this court or show cause why he/she should not be suspended or disbarred from practice in this court. The order shall warn the attorney that failure to respond in a timely fashion will result in removal from the roll of admitted attorneys without further notice. A motions attorney, upon receipt of the response thereto, shall present the matter to a current motions panel for appropriate action **pursuant to Ninth Circuit Rule 46-2**. If the attorney fails to respond to the order to show cause, the Clerk shall order that the attorney be removed from the roll of attorneys eligible to practice before the court.

If the court becomes aware of **a violation of the applicable rules of professional conduct or a failure to comply with the rules or orders of this court**, or of any other conduct unbecoming a member of its bar, the court may **assign a docket number to the proceedings** and take such disciplinary action as it deems necessary pursuant to Fed. R. App. P. 46 and **Ninth Circuit Rule 46-2**.